

March 18, 1999

S 420. CLARIFY MV DEALERS LICENSING LAW. TO CLARIFY THE DEALERS AND MANUFACTURING LICENSING LAW. Makes a number of changes to the Motor Vehicle Dealers and Manufacturers Licensing Law (GS 20, Art. 12).

Adds a new GS 20-301(f) to provide that if a dealer has a grievance with a manufacturer that may be heard by the Comm'r but has voluntarily elected to submit the matter to the internal grievance procedure of the manufacturer or participate in an alternative dispute resolution procedure endorsed by the manufacturer, the time period within which the dealer must file the applicable notice or petition does not begin until these other processes have been completed and the dealer has been notified in writing of the result. Clarifies that the dealer is not required to exhaust these other processes before seeking redress from the Comm'r.

Amends GS 20-305(1) to make it unlawful for a manufacturer to require a dealer to accept delivery of a vehicle that has been equipped in a manner other than that specified by the dealer. Amends GS 20-305(4) to provide that with respect to a proposed transfer of ownership of a dealership, the sole issue to be determined by the Comm'r is whether the proposed transferee by virtue of poor character or lack of financial ability is unfit to own the dealership. Provides that with respect to a proposed change in the executive management or principal operator of the dealership, the sole issue is whether by virtue of lack of training, lack of prior experience, poor past performance, or poor character, the proposed candidate is unfit. With respect to a proposed relocation or other change, the sole issue is whether the proposed relocation is unreasonable under the circumstances. In each of the above cases, provides that the refusal of the manufacturer to agree to accept a proposal that meets the manufacturer's own written, uniformly applied standards is presumed to demonstrate the manufacturer's failure to prove that the proposed change should be disapproved. Makes it unlawful for a manufacturer to condition its approval of a dealership transfer, a change in the dealer's executive manager, or a proposed relocation upon the dealer's willingness to construct a new facility, renovate an existing one, acquire or refrain from acquiring line-makes of vehicles, separating or divesting line-makes, or establishing or maintaining exclusive facilities, personnel, or display space. Provides that if these restrictions do not apply because a dealer has relocated within the dealer's relevant market area but not within ten miles of a dealer with the same vehicle line-make, then only dealers trading in the same line-make located within the ten-mile radius are entitled to notice from the manufacturer and may protest. Also provides that if an existing dealer relocates within two miles of the existing site, then the restrictions do not apply only if the franchise has been operated on a regular basis for at least three years before the move.

Requires that in determining whether cause exists for entering or relocating an additional dealer for the same line-make, the Comm'r may consider the adequacy of the new dealer's facilities, equipment, supplies, and personnel only in comparison to markets of similar size and demographic makeup in North Carolina. Also provides that if the Comm'r determines that good cause for permitting an additional or relocated dealership does not exist, the manufacturer seeking the proposed additional dealership may not propose to do so for any location within ten miles of the originally proposed site for a period of five years after the Commr's decision.

Amends GS 20-305(6)(c)(1)(V) to provide that in a matter concerning the termination, cancellation, or nonrenewal of a franchise by a manufacturer, the manufacturer may not present evidence of failure in the dealer's performance more than one year after the manufacturer first knew of the alleged performance failure. Amends GS 20-305(6)(d)(2) to provide that the manufacturer must pay or reimburse the dealer for any transportation charges associated with the manufacturer's repurchase obligations when a franchise is terminated. Amends GS 20-305(6)(e), concerning dealership facilities assistance from the manufacturer. Provides that if a dealer, owner, or lessee does attempt to mitigate damages, then the dealer generally must pay to the manufacturer the net revenue received up to the amount of assistance received from the manufacturer. Also requires facilities assistance to be paid by the manufacturer within 90 days of termination.

Amends GS 20-305(7), governing the dealer's designated successor, to extend the provisions for such succession to the principal operator as well as the owner.

Amends GS 20-305(8) to make it unlawful for a manufacturer to require a dealer to accept delivery of new vehicle with options that are added by the manufacturer or distributor at port or at any other time subsequent to the time the vehicle is assembled at the factory.

Amends GS 20-305(27) to make it unlawful for a manufacturer to conceal any material fact to induce the dealer to enter into any agreement that is materially prejudicial to the dealer or his business.

Amends GS 20-305(30) to make it unlawful for the manufacturer to vary the price charged for a new vehicle based on the dealer's purchase of certain types of related merchandise, the dealers' commitment to establish exclusive facilities, personnel, or display space, the dealer's success in achieving certain scores or levels of customer satisfaction under a manufacturer's program, the dealer's willingness to provide loaner vehicles to customers having a vehicle serviced, or the dealer's employment of a consultant endorsed by the manufacturer.

Adds GS 20-305(33) to make it unlawful for a manufacturer to fail to reimburse a dealer for the cost of providing a loaner vehicle if providing the loaner vehicle to a customer if required by the manufacturer. Adds GS 20-305(34) to make it unlawful for a manufacturer to require a dealer to participate in a training program if the subject matter is not limited to information necessary to sell or service vehicles under the terms of the franchise.

Amends GS 20-305.1(b) to make any audit for sales and service incentives and rebates applicable to the 12-month period (now, 24-month period) following the date of the payment of the claim.

Amends GS 20-305.2 (unfair methods of competition) to prohibit a manufacturer or distributor from owning directly or indirectly a dealership in this state. Excepts ownership by a manufacturer or distributor in certain circumstances where dealership is in transition and manufacturer or distributor has relationship with a party that is reasonably expected to acquire full ownership of the dealership within a reasonable period of time. Makes restrictions on manufacturer or distributor ownership inapplicable to manufacturers or distributors of trailers or semitrailers.

Effective Oct. 1, 1999.

Intro. by Hoyle.

Ref. to Commerce

GS 20

April 27, 1999

S 420. CLARIFY MV DEALERS LICENSING LAW. Intro. 3/18/99. Senate committee substitute makes the following changes to 1st edition. Deletes proposed amendments to GS 20-305(5)b regarding a determination of good cause to be made by comm'r for establishment of a new motor vehicle dealer for the same line make. Adds new provision to GS 20-305(14) requiring each manufacturer to allocate its products in a manner that provides each of its franchised dealers in NC an adequate supply of vehicles by series, product line, and model to achieve the manufacturer's minimum sales requirements, planning volume, or sales objectives and that is fair and equitable to all of its franchised dealers. Adds new GS 20-305(35) providing that notwithstanding the terms of any franchise, agreement, waiver, or novation, to limit the number of franchises of the same line make of vehicle that any motor vehicle dealer may own or operate within NC or attach any such restrictions or conditions on such ownership or operation without making the same limitations, conditions, and restrictions applicable to all of its other franchisees. Adds new GS 20-305.1(b2) providing that a manufacturer may not deny a motor vehicle dealer's claim for sales incentives, service incentives, rebates, or other forms of incentive compensation, reduce the amount to be paid to the dealer, or charge a dealer back subsequent to the payment of the claim unless it can be shown that the claim was false or fraudulent or that the dealer failed to reasonably substantiate the claim either in accordance with the manufacturer's written procedures or by other reasonable means. Adds to GS 20-305.2 that an exception to unfair competition is the ownership, operation, control of a new motor vehicle dealership by a manufacturer, factory branch or distributor, distributor branch or subsidiary thereof that directly or indirectly owns, in aggregate, directly or indirectly, no more than a 34% interest in the dealership and that is not located within 65 miles of any other new motor vehicle dealership trading in the same line make of vehicle, with the exception of other same line make new motor vehicle dealerships that are owned by and operated by the same or affiliated corporations or other business entities, and there are no other dealerships of the same line make owned by other parties within said 65 miles.

July 7, 1999

S 420. CLARIFY MV DEALERS LICENSING LAW. Intro. 3/18/99. House committee substitute makes the following changes to 2nd edition. Amends GS 20-305 to specify, as grounds for Comm'r to deny transfer of ownership, sale, or assignment, lack of good moral character, lack of general business experience, or lack of financial ability. Amends GS 20-305(6) to provide that dealer seeking judicial review of order of Comm'r must, within 30 days of entry of order, provide security in amount deemed appropriate by reviewing court for payment of cost and damages as may be incurred by manufacturer by reason of and during pendency of the stay. Although right of affected dealer to stay is automatic, procedure for providing such security and for award of damages to manufacturer, if any, upon dissolution of stay shall be in accordance with GS 1A-1, Rule 65(d) and (e). No security provided by affected dealer shall be forfeited or damages awarded against a dealer who obtains a stay if the ownership of affected dealership is subsequently transferred, sold, or assigned to a third party in accordance with this section. Amends GS 20-305(6)e.1 to provide that in case of motorcycle dealerships, the manufacturer shall pay the new motor vehicle dealer the equivalent of the rent for the unexpired term of the lease or one year's rent, whichever is less, or for such longer term as provided in the franchise agreement between the dealer and manufacturer; makes conforming change to GS-20-305(6)e.2. Amends GS 20-305(6)e.3. to provide that the dealer, owner, or lessee has obligation to mitigate damages by listing demised premises for lease or sublease with a licensed real estate agent within 30 days after the effective date of the termination of the franchise and thereafter by reasonably cooperating with the agent in performance of the agent's duties and responsibilities. Deletes provision in GS 20-305(8) concerning options added by manufacturer or distributor at port or at other time subsequent to factory assembly. Amends GS 20-305(14) to provide that except as may be required by any consent decree of the Comm'r or other order of the Comm'r or court of competent jurisdiction, manufacturer shall allocate products to provide adequate supply to dealers. Changes expiration date for provisions of GS 20-305(30) to Dec. 31, 2002, and deletes other changes to that section. Adds GS 20-305(36) to make it unlawful, with regard to any manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof that owns and operates a new motor vehicle dealership, directly or indirectly through any subsidiary or affiliated entity, to unreasonably discriminate against any other new motor vehicle dealer in the same line make in any matter governed by the motor vehicle franchise, including the sale or allocation of vehicles or other manufacturer or distributor products, or the execution of dealer programs for benefits. Adds GS 20-305(37) to provide that subdivisions (11) and (25) of this section shall not apply to any manufacturer, manufacturer branch, distributor, distributor branch, or any affiliate or subsidiary thereof of new motor vehicles that manufactures or distributes exclusively new motor vehicles with a gross weight rating of 8,500 pounds or more, provided the following conditions are met: (1) manufacturer has, as of Nov. 1, 1996, an agreement in effect with at least three of its franchised dealers within the State, and which agreement was, in fact, being enforced by the manufacturer, requiring the dealers to maintain separate and exclusive facilities for the vehicles it manufactures or distributes, and (2) there existed at least seven dealerships (locations) of that manufacturer within the State as of Jan. 1, 1999. Amends GS 20-305.1(b) to provide that any audit for sales incentives, service incentives, rebates, or other forms of incentive compensation shall only be for the 12-month period immediately following the date of the termination of the sales incentive program, service incentives program, rebate program, or other form of compensation program. Amends GS 20-305.2(a)(2) to provide that this section shall not be construed to prohibit ownership or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, while in a bona fide relationship with an economically disadvantaged or other independent person, other than a manufacturer, factory branch, distributor, distributor branch, or an agent or affiliate thereof, who has made a bona fide unencumbered initial investment of at least 6% of the total sales price that is subject to loss in the dealership and who can reasonably expect to acquire full ownership of the dealership within a reasonable period of time, not to exceed 12 years, and on reasonable terms and conditions. Adds GS 20-305.2(a)(5) to provide that this section shall not be construed to prohibit the ownership, operation, or control of any facility (location) of a new motor vehicle dealer in this State at which the dealer sells only new

and used motor vehicles with a gross weight rating of 8,500 pounds or more, provided facility is within 35 miles of manufacturing or assembling facilities existing as of Jan. 1, 1999, and is owned or operated by the manufacturer, manufacturing branch, distributor, distributing branch, or any affiliate or subsidiary thereof, and the facility is located in the largest SMSA of the State. Adds GS 20-305.2(a)(6) to provide that this section shall not be construed to prohibit, as to any line make of motor vehicle for which there is in aggregate no more than 13 franchised new motor vehicle dealers (locations) licensed and operating within the State as of Jan. 1, 1999, the ownership, operation, or control of one or more new motor vehicle dealerships trading solely in such line by the manufacturer, factory branch, distributor, distributor branch, or subsidiary or affiliate thereof, provided that all four of these conditions are met: (1) manufacturer or other listed entity does not own over 45% interest in dealership; (2) at the time the manufacturer or other listed entity first acquires ownership, distance between the dealership and nearest other new vehicle dealership trading in the same line make of vehicle is no less than 35 miles; (3) all the manufacturer's franchise agreements confer rights on the dealer of the line make to develop and operate within a defined geographic territory or area as many dealership facilities as the dealer and manufacturer shall agree are appropriate; and (4) that as of July 1, 1999, no fewer than half of the dealers of the line make within the State own and operate two or more dealership facilities in the geographic territory or area covered by the franchise agreement with the manufacturer. Amends GS 20-305.2(b) to provide that this section shall not apply to manufacturers or distributors of trailers, motor homes, or semitrailers.